IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 460 OF 1989

1. Harinarayan Shivnarayan Malpani
2. Maniklal Shivnarayan Malpani
3. Satyanarayan Shivnarayan Malpani ..Appellants.

Versus

The State of Maharashtra ..Respondent.

Ms. Asha Bhamwani i/by A.K.Abhyankar for the Appellants.

Shri V.B.Sakhare, AGP for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 21st JUNE, 2005

ORAL ORDER :

1. Heard Advocate for the Appellants and learned AGP for the State. This appeal is filed by the original claimant for further enhancement of the compensation awarded to her by the Reference Court under the Land Acquisition Act.

2. House property bearing City Survey No. 288, admeasuring 496 square metres situated within the Municipal Limits of Wai; constructed in Pakka bricks and mud with roof of corrugated iron sheets, was acquired by the Respondent- State. This property was situated in the heart of the city in business area. It has roads on both the sides and the property was taken by the Wai Municipality for Primary School. The SLAO awarded compensation at Rs. 87.35/- per square metre so far as this land is concerned and the structure was valued at Rs. 5,000/- only. Being aggrieved by this order of SLAO, the claimant made the reference to the City Civil Court but the same came to be dismissed. Hence, this Appeal.

3. Counsel for the Appellants contended that the sufficient evidence was adduced by the claimant to prove the nature of construction. An expert was examined, who has given all the details of valuation of the different parts of the building with G.I. sheets, teak wood, bricks, stones etc., and even though has given the size, shape and other particulars of the building as per the report of valuer K.N.Bapat, an Architect of Pune. However, according to the counsel for the Appellants this report was not at all considered effectively and properly and therefore, this has resulted in failure of justice. She also contended that the acquired property, as mentioned above, was in

the busy locality of Wai, which was within the municipal area. There were commercial plots, complexes around the property and therefore, the property was valuable with non- commercial potentiality.

4. On the other hand, the learned AGP contended that from the evidence of the claimant and expert, it was clear that the house was totally in dilapidated condition. G.I.sheets were all damaged due to corrugation, bricks were absolutely useless and so far as N.A. potentiality of the property is concerned, the municipality was running the school and there was no chance for the claimant to convert the room for any other business purpose or for commercial purpose. Therefore, according to him, the reference Court was justified in dismissing the Reference.

5. Looking to the situation and location of the property, this is a case where the compensation awarded should have been enhanced by the Reference Court. Therefore, the order of dismissal of the reference is wrong. In para -14, the Reference Court has noted and observed that even according to the S.L.A.O., looking to the location and situation of the property, the Appellant was entitled to 15% rise, so far as his land valuation is concerned; but even then the Reference Court dismissed the petition. S o far as the expert evidence is concerned, he has proved his report and has

stated that 440 C.F.T. of teak -wood, value of 200/- per square feet, amounting to Rs. 88,000/-; 187 C.G.I. sheets @ Rs.100/- per sheets, amounting to Rs. 18,700/-; 25000 bricks @ Rs. 400/- per thousand, comes to Rs. 10,000/- and 600 stones @ Rs. 5 per stone, comes to Rs. 3,000/-. The learned counsel for the appellant, therefore, contended that the appellant was therefore, entitled to get Rs. One lakh after deduction. As against this, the learned AGP drew my attention to para -14 of the judgment, wherein the Reference Court has observed that there was no cement plastering to the walls of the building. All the inner walls of the building had fallen at some places. The walls below the roof had fallen. Door-frames had become loosen. The plastering was of mud and hay-stack in the inner side of the building. The wooden parts used for building were decayed. The roofing of G.I.sheets was rusted and having leak holes. The flooring was duged. The windows have disappeared and the room doors and windows are decayed. These observations are made by the Reference Court from the photograph at Exh. 31. Even if it is true that, the above was the condition of the material used in the building, there was no justification in totally rejecting the claim of the claimant, so far as value of the material used was concerned, as deposed by the expert, supported by his valuation report. Admittedly teak wood is very valuable, therefore, the valuation

made at Rs. 88,000/- ought to have been awarded. So far as C.G.I. sheets are concerned, 50% of the valuation made by the expert i.e. at Rs. 9,350/; for bricks nothing and for stones Rs. 3,000/-. The total of this amounting to Rs. 1,00,350/- should have been granted. So far as the land value is concerned, the SLAO, as observed by me earlier, has recommended 15% rise. Therefore, looking to the location and situation of the property 30% rise in the compensation in respect of the land should have been granted. Therefore, this appeal is required to be allowed and I pass following order.

ORDER

i. The Appeal is allowed.

ii. The impugned order of the dismissal of the Claim Petition is set aside.

iii. In addition to the compensation awarded by the SLAO, the claimant will be entitled to Rs.1,00,350/-, plus 30% rise in the compensation in respect of the acquired land with all statutory benefits and also cost of the Appeal.

Dt. 21.06.2005 (D.G. DESHPANDE,J.)

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